

<b>JON J. FINNEGAN</b>	)	
Claimant	)	
VS.	)	
	)	Docket No. 228,253
<b>DEAN KEIL, d/b/a DEAN'S AUTO REPAIR</b>	)	
Respondent	)	
AND	)	
	)	
<b>FARMERS INSURANCE EXCHANGE</b>	)	
Insurance Carrier	)	

Claimant alleges he sustained a hernia on August 7, 1997, when he slipped from a milk crate while working on a pickup truck engine and caught his stomach on the truck's fender. At the time of the alleged incident, claimant was working for the respondent as a mechanic. Despite allegedly experiencing intermittent pain and a burning sensation in his groin after the incident, he did not notify his supervisor of the accident until August 26, 1997.

The alleged accident occurred on a Thursday. On Saturday, August 16, 1997, claimant ran in a 10-K race in Colorado Springs.

Claimant first sought medical treatment on August 28, 1997, when he saw Dr. T. Scott Webb. At that time, claimant described his injury as follows:

"[W]as working over a truck fender standing on a plastic crate, crate slipped and I caught myself on my stomach; sliding down over my groin."

Dr. Webb diagnosed a "very obvious right-sided inguinal hernia that extended into the groin." Unfortunately, the doctor was unable to provide an opinion whether the traumatic incident that claimant described caused the hernia. The doctor, however, testified that he believed the hernia would have made it difficult to run or jog unless it had existed for awhile.

The answers to the questions whether claimant sustained an injury at work and whether just cause exists to extend the mandatory 10-day notice period to 75 days are dependent upon claimant's testimony and credibility. The Administrative Law Judge, in light of the other evidence presented, apparently did not believe claimant's description of the accident and reasons for the delay in providing notice to the respondent. Because the Administrative Law Judge had the enviable opportunity to personally observe claimant testify and assess his demeanor and credibility, in this instance the Appeals Board gives some deference to that determination. When considering the entire record, the Appeals Board agrees with the Administrative Law Judge and adopts the conclusions that claimant failed to prove (1) he sustained personal injury by accident arising out of and in the course of his employment with respondent and (2) that he provided respondent with timely notice of accidental injury.

The Appeals Board notes that claimant argued that respondent was not prejudiced by the failure to provide notice within ten days of the accident. Under the applicable version of K.S.A. 44-520, however, the employer's prejudice is no longer relevant.

The Appeals Board also notes that claimant photocopied and attached to his brief the three transcripts that are included in the evidentiary record. Because the entire administrative file, including the original transcripts, are forwarded to the Appeals Board for review, the parties are neither required nor expected to reproduce the testimony in such manner.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the preliminary hearing Order dated April 3, 1998, entered by Administrative Law Judge Bruce E. Moore should be affirmed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of May 1998.

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BOARD MEMBER

c: Todd R. Stramel, Hays, KS  
C. Stanley Nelson, Salina, KS  
Bruce E. Moore, Administrative Law Judge  
Philip S. Harness, Director